and this seems right where it turns out that the boundaries are obscure.

A latent ambiguity does not necessarily avoid an instrument, and yet it is obvious that in many cases a latent ambiguity may turn out as fatal to an instrument as the most hopeless case of a patent ambiguity. The extrinsic evidence adduced to explain it sometimes proves entirely unsatisfactory and results in leaving the matter wholly to conjecture, in which case the instrument cannot be enforced. The learning on this subject is voluminous, but indigested. The foregoing, gathered mainly from Cowen & Hill's notes on Phillips's Evidence points out the several kinds of ambiguities and their effects on written instruments, and may serve a good purpose by calling to the subject the attention of the student of legal science.

S. H. O.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

THE STATE *v.* THOMAS O. GOOLD.

It is a reasonable regulation for a railroad corporation to fix rates of fare by a tariff posted on their stations, and to allow a uniform discount on these rates to those who purchase tickets before entering the cars.

A passenger, who has thus neglected to purchase a ticket, has no right to claim the discount, and if he refuses to pay to the conductor the fare established by the tariff, the conductor is justified in compelling him to leave the train at a regular station.

Peters, *Attorney-General*, for the state.

P. Barnes, for defendant.

The respondent was indicted for assault and battery, and a verdict of guilty was rendered against him. He was a conductor on the Grand Trunk Railway. The company had established certain rates of fare, and had published the same by posting them on a sheet in their different station-houses. On this sheet was a notice that a discount of ten cents from these established rates would be

made in favor of those passengers who should purchase tickets before entering the cars.

The complainant entered the cars without purchasing a ticket, and refused to pay the established rate, but insisted on the discount. The conductor removed him from the car at a regular station. The assault and battery charged was for this removal.

The opinion of the court was drawn up by

KENT, J.—Railroad corporations have an undoubted right to fix and determine the rates of fare on their roads, within the limits specified in their charters or by existing laws. They have also an undoubted right to make reasonable regulations as to the time, place, and mode of collecting the same from passengers. They may reasonably require payment before the arrival of the train at the station where the passenger is to leave the cars. We see no reason to question their right to require payment in advance, to be made at a convenient office, and at convenient times; certainly, where there is no positive interdict to entering the cars without a ticket, as in this case. There is neither hardship nor unfairness towards the passenger, who, ordinarily, can pay his fare and procure his ticket, without trouble or delay, at the office. But to the company it is something more important than mere convenience that such regulations should be enforced. It is important in simplifying accounts. It is important to promote and secure safety, by allowing time to the conductor to attend to his proper duties on the train, and which would be often seriously interfered with, if his time was taken up in collecting fares and exchanging money, and answering questions. It is highly important as a check against mistakes or fraud on the part of conductors, and as a guard against imposition by those seeking a passage from one station to another without payment.

In the case at bar, no absolute rule of exclusion was established. It appears from the statement of facts in evidence, that certain rates of fare were established by the company—that these rates were the regular rates, published in the tariff tables, posted in the stations of the company. It was the rate thus established that the passenger in this case was requested to pay. But he says that he was not bound to pay the sum thus fixed, because by the same rules and tariff a discount of ten cents was made from the rates to those persons who purchased tickets at the office before

entering the train, and that this, in fact, created two distinct and different rates for the same passage.

If this were so, we are not prepared to decide that it would be an unreasonable or illegal exercise of the power given to the corporation. Assuming that it is reasonable to require pre-payment and the production of a ticket, it would seem to be simply a relaxation of the rule, in favor of the passenger, to allow him to pass upon the payment of another rate, slightly advanced. If he neglected to avail himself of the opportunity offered to him to procure a ticket at the lower rate, he can hardly complain that he is allowed to proceed in the train, on payment of the rate established for such cases, instead of being at once removed from the car.

In fact, however, in this case, but one rate was established, and that was the sum required in the cars. This was "the established fare," specified in our R. S., ch. 51, sec. 47. A discount of ten cents was made on these rates, if a ticket was purchased before entering the train. What right had this passenger to claim this *discount* on the established rate? If he knew of the regulation, it was his carelessness or folly that led him to neglect this opportunity. If he did not know it, it was his misfortune. The company had done all that could reasonably be required of them, by posting the regulation conspicuously in the stations of the company. It would be an utterly impracticable rule to require that every passenger should be personally notified of its existence before entering the cars. Although it is not important in the view we take, yet one cannot help asking how this particular passenger persistently insisted on paying only "the sum required at the ticket office," if he did not know of the rule allowing the discount at the offices? But if the regulation was reasonable, and reasonable notice had been given of its existence, it is not necessary to prove actual knowledge of its existence on the part of the passenger before entering the cars. It was not a special and exceptional but a general rule. If a passenger enters the car, without knowing anything of the rates of fare or of the rules in relation thereto, and without making any inquiries, he must be held to pay, as on an implied contract, according to the reasonable rates and rules of the company. He might as well claim exemption from the payment of *anything* for his passage, because he did not personally know that any rates, or what rates, were established, as to

claim exemption from the rule which makes a distinction in rates, because he did not ascertain the fact before entering the train.

The question is to be determined on the ground of reasonableness and power, and not on the ground of individual knowledge.

The conductor of a train is justified in compelling a passenger who utterly refuses to pay his legal fare, to leave the car at a regular station: R. S., ch. 51, sec. 47.

The principles before stated have been recognised and sanctioned in Vermont, in the case of *Stephen* v. *Smith*, 29 Verm. 160, and by the Court in New Hampshire in the case of *Hilliard* v. *Goold*, 34 N. H. 230. See also Redfield on Railways, sec. 26, *Commonwealth* v. *Powers*, 7 Met. 596.

The decision of the questions involved in this case rests upon two general principles, well established, viz.—that it is the *duty* of the corporation to adopt such regulations as are required to secure the comfort and safety of passengers, and it is equally their *right* to adopt all reasonable rules for their own security and the orderly management of their business. The corporation is no more bound by the one than the passenger is by the other.

The ruling of the judge was incorrect.

Exceptions sustained. New trial granted.

I. The foregoing opinion embraces a question of considerable practical importance, and one in regard to which, at different times, there seems to have been considerable doubt and uncertainty among railway managers in this country. It is probably known to our readers that, as a general thing, upon European railways, both in England and upon the Continent, the passenger is required to produce his ticket in order to gain admittance into the carriages of the train; and the particular compartment of the carriage, if not the particular seat, is indicated upon the ticket. The same rule obtained, for a time, upon some of the railways which first went into operation here, and does, even at the present time, to a very limited extent. But the rule was found inconvenient in most localities, and has been very generally relaxed; and passengers are, at the present time, more commonly allowed to enter the cars, in all portions of the country, and to pay fare to the conductors.

This is done at considerable inconvenience to the conductors, and not a little hazard thereby arises of neglecting other important duties. But the most serious evil to railway management thereby induced results from it breaking up all systematic control of the finances of the company, by reason of the impracticability of maintaining a thorough check upon all receipts and disbursements. And if that system of exact check is thus infringed, it becomes difficult, if not impossible, to secure the same degree of public confidence which would otherwise be attainable. And there is another embarrassing result—the want of perfect confidence and security among the different receiving

and disbursing agents of the company—which is almost indispensable to the harmonious management of extensive public works.

There can therefore be no question of the importance of the requirement, that fares shall be paid at the stations. And it has always seemed to us that the regular fares should be established, with reference to payment, at the stations, and should always be required to be so paid. And if any relaxation is allowed, for payment of fare in the cars, under any circumstances, it should be strictly defined upon what grounds it will be allowed, and an additional sum required sufficient to compensate the company for increased trouble and risk of loss. That was the form in which the discrimination was first made in such cases; but some over-nice heads—more nice than wise, as we regard it,—suggested that all question would be avoided by making the *regular fare* the sum which should be required in the cars, and a reduced sum receivable at the stations. That has very much the appearance of an evasion, or else of fixing the *regular fare as payable in the cars*, when the fact, as everybody well enough understands, is that the *regular fare* is that which is receivable at the stations; and if it had generally assumed this form, it would have had a strong tendency to crowd out the paying of fare in the cars, by giving it a bad name, and causing persons to feel that they were thereby compelled to pay more than the regular fare. The evasion, as far as it tends to gloss over the discrimination, to the same extent tends to defeat its object, by inducing persons to pay at the stations. We think, therefore, that the direct and manly, the straight-forward form of making the discrimination is the true one, so as thereby to render the payment of fare in the cars difficult and odious.

II. In regard to the right to make such a discrimination, we believe there is no ground of hesitation or doubt. In addition to the cases already referred to in the opinion of the learned judge, the question is ably discussed in *Crocker* v. *New London, W. & P. Railway*, 24 Conn. Rep. 249; *Chicago, Quincy & B. Railway* v. *Parks*, 18 Illinois Rep. 460; *St. Louis, Alton & Chicago Railway* v. *Dalby*, 19 Illinois Rep. 353.

If the company have the right to require all fares paid in advance at the stations before receiving tickets or entering the cars, of which there can be no question, it would seem very obvious that they may indemnify themselves against loss and risk by consenting, under special circumstances, to receive fare in a different mode.

It has been made a question in some cases whether the company, if they receive fares in their cars at all, should not consent to accept the same fare which they demand at their stations, in all cases where the passenger is not in fault for not obtaining a ticket in advance, the office of the company being closed at the proper time for applying for it: *St. Louis, Alton & Chicago Railway* v. *Dalby, supra, Chicago, Quincy & B. Railway* v. *Parks, supra.* This distinction, however, does not seem to have been considered important in *Crocker* v. *New London, W. & P. Railway, supra.*

I. F. R.